

LABOUR DEPARTMENT

The 11th April, 1977

No. 2558-4Lab-77/8894.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workwoman and the management of M/s. Khadi Ashram, Panipat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 78 of 1971

between

SHRIMATI PATTO DEVI, WORKWOMAN AND THE MANAGEMENT OF M/S KHADI ASHRAM,
PANIPAT

AWARD

By order No. ID/KNL/12 C/18439—43, dated 14th June, 1971 of the Governor of Haryana, the following dispute between the management of M/s Khadi Ashram, Panipat and its workwoman Shrimati Patto Devi, was referred to this Court, for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 ;

“Whether the termination of services of Shrimati Patto Devi was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them.

The workwoman alleged,—*vide* claim statement filed by her in conformity with the notice of demand, dated 1st March, 1971 that the management illegally terminated her services with effect from 27th February, 1971 in order to victimise her for her taking legal action against the deduction of Rs 8 per mensem by them out of her total wages of Rs 60 per mensem.

The management,—*vide* written statement filed by them raised preliminary objection, that the appropriate Government in such case for purposes of making the reference under section 10 of the Industrial Disputes Act was the Central Government and not the Haryana Government as held by Industrial Tribunal, Haryana,—*vide* award, dated 22nd January, 1968 in reference No. 83 of 1967 and as such the reference made by the Haryana Government was bad in law besides being barred under the principles of *res judicata*. On facts of the case they pleaded that the workwoman concerned had been employed as a temporary worker at Rs 2 per day on casual basis for wool sorting and her services could not be retained for want of work with the management to keep her engaged in January 1971. They admitted that an order for recovery of the amount deducted by them from her wages, had been passed by a competent authority under the Payment of Wages Act in her favour. They, however, stated that they had assailed this order in a writ petition in the High Court.

The workwoman controverted the pleas of the management and reiterated the allegations made by her in the claim statement *vide* rejoinder filed by her.

The management took an additional plea by way of an amended written statement filed by them with the permission of this Court on 17th May, 1974 that they were not an Industry and the reference made to this Court was bad even on this ground.

The following issues were thus framed on pleas of the parties,—*vide* orders, dated 4th August, 1971, 13th December, 1971 and 26th June, 1974 :—

- (1) Whether the State of Haryana is not appropriate Government as the Uni-Utpatti Kendra is a department of Khadi Ashram which is being carried on under Central Government ?
- (2) Whether the present reference is barred under the principles of *res judicata* ?
- (3) Whether the termination of services of Shrimati Patto Devi was justified and in order ? If not to what relief is he entitled ?
- (4) Whether Khadi Ashram Panipat is an Industry within the meaning of the Industrial Disputes Act, 1947 ? If not, with effect ?

Issues Nos. 1 and 2 were decided against the management,—*vide* detailed order, dated 3rd November, 1971 by Shri P. N. Thukral, the then Presiding Officer, Labour Court, Haryana. Issue No. 3 was decided in favour of the workman,—*vide* consolidated order, dated 20th June, 1975, by Shri O. P. Sharma, the then Presiding Officer, Labour Court. All these findings remained unassailed and being not contested before me even now have become final.

The answer of the reference thus now admittedly centres round the decision of issue No. 3. I propose to decide this issue as under :—

The management examined Shri Rup Ram Yadav, Manager of their branch Uni Utpatti Kendra in support of their plea relating to the purely casual employment of the workman on daily wages of Rs 2 and oral termination of her services with effect from 21st January 1971, on the ground of want of work with them to keep her engaged. He deposed that the workman had been employed on daily wages of Rs 2 on 3rd April, 1970 and that the number of days she worked in every month since then were as under in the manner as stated in the written statement :—

April, 1970	23 days
May, 1970	25 days
June, 1970	18 days
July, 1970	27 days
August, 1970	7 days
September, 1970	26 days
October, 1970	13 days
November, 1970	25 days
December, 1970	27 days
January, 1971	17 days

He stated that he did not know as to where did the workman work before 3rd April, 1970, when she was employed with them. This part of his statement is found specifically contradicted by Shri Hari Singh, Office Incharge of the management concerned,—*vide* his statement that Shrimati Patto Devi was their employee in the finishing department from May, 1969 to March, 1970. The statement of Shri Rup Ram that he did not know the place where she worked before 3rd April, 1970 is nothing but obviously a tissue of lies made only with a view to conceal her employment with the management continuously since May, 1969. The explanation made by Shri Hari Singh examined as WW-2 in cross-examination, that the services of the workman were terminated with effect from 1st April, 1970,—*vide* letter Exhibit M-X delivered to her personally under her thumb-impression and that she was employed in April, 1970 on a casual basis is again a clumsy attempt on his part to show the break in her service with them admittedly from May, 1969. It can not be reasonably expected of a management working normally that they would terminate the services of the workman or workwoman only the day before her re-employment with them the next day and such a course if adopted is nothing but a device to show illegally a break in his or her service, only in order to deprive him or her of the legitimate benefits accruing due to him or her under the condition of his or her employment or statutory provisions governing her.

The details of the days on which the workwoman admittedly remained present on duty besides Sundays and other national and festival holidays every month from 1st April, 1970 to 21st January, 1971, as stated in the written statement and deposed by Shri Roop Ram further establishes that the workwomen worked continuously from 1st April 1970 to 21st January, 1971, excepting a few days on which she had to perhaps absent herself on account of ailment or other un-avoidable reasons. Thus calculated she admittedly worked for 208 days from 1st April, 1970 to 21st January, 1971 and due allowance being made for Sundays and other National and Festival Holidays, it cannot by any stretch of imagination be said that she had been employed on a casual daily wages basis with an option to the management to decline to take her on duty on any day except by way of retrenching her services according to law, particularly when on the showing Shri Hari Singh, Office Incharge, management concerned himself she was in their service since May, 1969. There is no cogent reliable evidence on record in respect of delivery of order, dated 18th March, 1970, copy Exhibit M-X, terminating her services with effect from 31st March, 1970, to the workwoman and the solitary statement made by Shri Hari Singh in cross-examination to that effect cannot be relied upon.

There is admittedly no letter of appointment of the workwomen on record and in absence thereof and any other documentary evidence in that direction, the lone oral statement of Shri Rup Ram that the workwomen had been employed on purely casual daily basis cannot be relied on to establish the plea of the management

taken by them in the written statement. I am as such convinced from the circumstance of the continuous work of the workwoman on duty from May, 1969 to 21st January, 1971, that she was a regular employee of the management with full entitlement of the benefits arising therefrom under the Industrial law.

The sole oral statement of Shri Rup Ram that the services of the workwoman had to be terminated with effect from 21st January, 1971, for want of work with the management to keep her engaged, is again not sufficient to prove the legality or propriety of the retrenchment particularly when the seniority list of the employees of the management and other documentary evidence in support of his statement was not brought on record. The admitted fact that the workwoman was granted a decree by an Authority under the Payment of Wages Act of the amount deducted illegally from her wages by the management at the rate Rs 8 per mensem since May, 1970, as a result of claim filed by her, lends corroboration to her allegations, that the termination of her services by the management with effect from 21st January, 1971 in an arbitrary manner, was vindictive and the result of a malice that they nursed against her on that account. Considered from any angle the management have miserably failed to prove that the workwoman had been employed on purely casual daily basis or that the termination of her services by them was justified. The result is that she is entitled to reinstatement with full back wages and continuity of service.

I decide this issue accordingly and answer the reference while returning the award in these terms.

Dated the 17th March, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 509, dated the 21st March, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 17th March, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana
Rohtak.

No. 2370-4Lab-77/8957.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the Management of M/s Karam Singh, son of Ram Chand, Lakri Beopar, village Panaoti, P.O. Samalkha, Tehsil Panipat (Karnal).

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER LABOUR, COURT, HARYANA,
ROHTAK

Reference No. 208 of 1970

between

SHRI ROOP CHAND, WORKMAN AND THE MANAGEMENT OF M/S KARAM SINGH, SON OF
RAM CHAND, LAKRI BEOPAR, VILLAGE PANAOTI, P.O. SAMALKHA, TEHSIL
PANIPAT (KARNAL)

AWARD

By order No. ID/KL-138-A/38577-81, dated 19th November, 1970, of the Governor of Haryana, the following dispute between the management of M/s. Karam Singh, son of Ram Chand, Lakri Beopar, Village Panaoti, P.O. Samalkha, Tehsil Panipat (Karnal) and its workman Shri Roop Chand, was referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

"Whether the termination of services of Shri Roop Chand was justified and in order? If not, to what relief is he entitled?"

Whereas the workman put in his appearance, on 12th February, 1971, in response to the usual notices of reference sent to him, the management could not be served with such notice issued to them for their appearance on that date. Notices of reference were thus sent to the management, many a times thereafter but they could not be served with the same, despite attempts made time and again by this Court in this connection. The management were served with notices of reference for the first time for their appearance in this Court on 23rd February, 1976. They absented themselves on that date despite being so served through registered post with the result that *ex-parte* proceedings were taken up against them on that date.

The case was accordingly adjourned thereafter from time to time for recording *ex-parte* evidence of the workman. Shri Mukand Lal, authorised representative for the workman was granted five or six adjournments for examination of the workman but he could not arrange his appearance of the workman despite adjournments being granted to him for that purpose, and he finally absented himself on 10th March, 1977 the date of hearing fixed in the case.

The history of the case briefly stated above would indicate, that neither the workman nor the management are interested in pursuing this reference. I am thus convinced that the workman is not now interested in pursuing the demand raised by him on the management leading to this reference and that he is not even available for supporting his demand. I, therefore, hold that there is now no dispute between the parties requiring adjudication. I answer the reference while returning the award in these terms.

The 10th March, 1977.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court Haryana,
Rohtak.

No. 496, dated 17th March, 1977

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2369-4Lab-77/8959.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Panipat Cooperative Sugar Mills, Panipat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 229 of 1976

between

SHRI BANI SINGH WORKMAN AND THE MANAGEMENT OF M/S. PANIPAT
CO-OPERATIVE SUGAR MILLS, PANIPAT

AWARD

By order No. ID/KNL/13-C-72/39431-35, dated 13th November, 1972 of the Governor of Haryana, the following dispute between the management of M/s. Panipat Co-operative Sugar Mills, Panipat and its workman Shri Bani Singh, was referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

“Whether the termination of services of Shri Bani Singh was justified and in order? If not, to what relief is he entitled?”

Whereas the management put in their appearance in this Court on 28th May, 1973, in response to the usual notices of reference sent to them, the workman failed to appear on that date despite service of such notices with the result that *ex parte* proceedings were taken up against him and an *ex parte* award dated 29th May, 1973 was made by my learned predecessor Shri O. P. Sharma, the then Presiding Officer, Labour Court, Haryana, with the findings that the workman concerned was entitled to service of the management as a fresh employee with effect from 3rd November, 1972 and that he was not entitled to back wages or continuity of service with effect from June, 1972 the month of termination of his service.

On an application made by the workman, for setting aside the *ex parte* award, the same was set aside,—vide my order dated 20th January, 1976 on the ground that service of notices of the reference was not proved to have been effected on Shri Bani Singh for his appearance in this Court on 28th May, 1973.

The parties filed their pleadings giving rise to the following issues framed,—*vide* order dated 24th November, 1976:—

1. Whether the reference made to this Court on a demand raised by one Shri Ram Dhan, More Lal, General Secretary, Karamchari Union, Sugar Mill, Panipat on behalf of the workman is legal ?
2. Whether the workman ever agreed to forego the continuity of service and back wages for the period ending the date of his re-employment ?
3. Whether the termination of service of Shri Bani Singh was justified and in order? If not, to what relief is he entitled?

The case was fixed for recording the evidence of the management on 8th March, 1977, when the workman made a statement before me withdrawing the demand served by him on the management leading to this reference, as a result of the mutual amicable settlement arrived at between the parties.

It would thus appear from the statement of the workman concerned that there is now no dispute between the parties requiring adjudication. I, therefore, answer the reference while returning the award in these terms.

Dated 10th March, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No 495, dated the 17th March, 1977

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2559-4Lab-77/8961.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Khadi Ashram, G. T. Road, Panipat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 193 of 1970

between —
SHRI RAM LUBHAYA SHARMA WORKMAN AND THE MANAGEMENT OF M/S KHADI
ASHRAM, G. T. ROAD, PANIPAT

AWARD

By order No. ID/KNL/12-B/34205-9, dated the 16th October, 1970 of the Governor of Haryana, the following dispute between the management of M/s. Khadi Ashram, G. T. Road, Panipat and its workman Shri Ram Lubhaya Sharma, was referred to this court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 ;—

“Whether the termination of services of Shri Ram Lubhaya Sharma was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Court, in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged—*vide* claim statement filed by him in conformity with the notice of demand dated 5th March, 1970 served on the management at his instance, that the latter dismissed him from service,—*vide* their order dated 16th January, 1968, illegally without holding any enquiry and that he was entitled to re-instatement with full back wages and continuity of service. He stated that he applied for grant of medical leave from 20th December, 1967 to 31st December, 1967 *vide* application made by him from time to time, duly supported by medical certificate.

The management resisted the demand of the workman on the preliminary grounds that the reference made to this Court by the Haryana Government was bad in law in as much as their business was carried on under the authority of Central Government which alone was competent to make such reference and that this reference was legally barred on principles of resjudicata as it had been held by Labour Court, Jullundur and Labour Court Rohtak that the appropriate Government for making such a reference was the Central Government. On merits of the case, the management pleaded that Shri Ram Lubhaya the concerned workman having been employed in the year 1962, continued to work as a mechanic on the card machine till December, 1964 when he met with an accident leading to the crushing of his hand and that he remained under treatment till 3rd November, 1965 and his four fingers had to be amputated and his hand was rendered defective. They stated that compensation of a sum of Rs. 4,800 was paid by them to the workman for his permanent disablement to the extent of 50 percent and despite his disability and their non-liability to take him in service, they absorbed him in their service to enable him to care his livelihood while granting him continuity of service and all other benefits available to him. They added that he could not adjust him well in any job and that finally they decided to transfer him to Derababa Nanak where the work of distribution of wool and collection of yarn, of a light nature could be entrusted to him in his handicapped condition. They added that the orders of transfer dated the 12th December, 1967 were not complied by the workman even though he was relieved, of his duties at Panipat on 18th December, 1967 and had been asked time and again to join his duties at Derababa Nanak thereafter and that on his failure to do so despite repeated directions given to him in this behalf they terminated his services *vide* letter dated the 16th January, 1968 considering that he was not interested therein. They specifically gave out that the workman was himself responsible for the orders of termination of his services. They denied receipt of any application from the workman for grant of leave on medical grounds.

The management took an additional plea by way of amendment of their written statement, that they were not an Industry and the reference was bad in law even on this ground.

The workman controverted the pleas of the management and reiterated the allegations made in the claim statement, *vide* rejoinder filed by him with the result that the following issues were framed *vide* order dated the 28th December, 1970, 19th January, 1971, 13th December, 1971 and 26th June, 1974, respectively:—

1. Whether the reference is invalid ?
2. Whether the award in reference No. 83 of 1967 operates as resjudicata between the parties ?
3. Whether the termination of services of Shri Ram Lubhaya was justified and in order ? If not, to what relief is he entitled ?
4. Whether Khadi Ashram, Panipat is a Industry within the meaning Industrial Disputes Act, 1947 ? If not, with what effect ?

Issue No. 2 was decided against the management *vide* detailed order dated the 12th May, 1971 of Shri P. N. Thukral the then Presiding Officer, Labour Court. Issue No. 4 was decided against in favour of the workman *vide* detailed order dated 20th June, 1975 of Shri O. P. Sharma the then Presiding Officer Labour Court Haryana. Issue No. 1 was decided against the management in view of the judgement of Punjab and Haryana High Court dated the 2nd April, 1974 holding that the Haryana Government and not the Central Government was the appropriate Government for making such reference. The findings thus made on preliminary issues No. 1, 2 and 4 remained uncontested and became final. None of the parties has therefore now any grievance against these findings and the decision of the reference now entirely depends on a finding on issue No. 3. I propose to decide issue No. 3 as under :—

Issue No. 3.—The management in order to prove their case under this issue examined one Shri Hari Singh office incharge Head Office, Panipat as MW-1. He deposed with regard to the unsatisfactory nature of work of the workman concerned and brought in this connection on record correspondence exchanged between the parties *vide* letters copies Exhibit M-2 to M-32. Suffice it to say, that this evidence is entirely irrelevant for the purposes of enquiry of this case relating to the issue under decision, inasmuch as, the service of the workman were not terminated as a result of his unsatisfactory nature of work but were on the other hand terminated *vide* letter copy Exhibit M-41 dated the 16th January, 1968 admittedly on account of his failure to comply with the order of his transfer dated the 12th December, 1967 and his continued absence from duty since 19th December, 1967. I, therefore, do not propose to discuss this part of the evidence led by the management. I, on the other hand believe that it is not necessary to give a finding as to whether the workman discharged his duties satisfactorily or not, during the period of his service, for deciding this reference.

The workman concerned was admittedly employed *vide* letter Ex.M-1, dated the 7th December, 1962 with a condition printed as No. 4 on its reverse that he shall be liable to be transferred in any of the branches of the management. There is no term of his employment, that he shall work at a particular place or on a particular job. Term No. 4 of the condition of his employment, referred to above, is not found to have even been assailed or disputed by the workman, so much so, he did not even deny its correctness in any of his letters, sent by him to the management after the receipt of the order of his transfer dated the 12th December, 1967. This condition shall under the circumstances be deemed to be well operative since 7th December, 1962.

The workman was admittedly transferred from Panipat to Derababa Nanak *vide* order, dated the 12th December, 1967 copy Exhibit M-33 and was subsequently undisputably relieved of his duties at Panipat on 18th December, 1967 *vide* letter copy Exhibit M-34 with a direction to him to report for duty at Derababa Nanak. He admittedly made a representation dated the 19th December, 1967, copy Exhibit M-35 against the orders of his transfer for grant of time to him to make an oral request to the Secretary of the management for cancellation of his transfer. The management declined his request for postponement of the operation of the order of his transfer made by him *vide* letter copy Exhibit M-35 *vide* their letter dated 21st December, 1967 copy Exhibit M-36 while intimating him that he should comply with the order and that he could make a request to the Secretary for cancellation of the order of his transfer after joining his duties at Derababa Nanak. Permission seems to have however been granted finally to the workman to stay at Panipat till 31st December, 1967 on leave with a direction to him to report for duty at Derababa Nanak latest by 8th January, 1968 failing which his service shall be terminated, as appears from the letter dated the 2nd January, 1968 of the management sent to him (copy Exhibit M-39). The workman having allegedly not reported himself for duty at Derababa Nanak till 8th January, 1968 despite admitted receipt of letter dated 2nd January, 1968 copy M-39 referred to above, he was admittedly further intimated *vide* letter dated the 12th January, 1968 copy Exhibit M-40 that he shall be responsible for the consequences of his failure to comply with the orders of his transfer dated the 12th December, 1967 copy Exhibit M-33 and the order dated 2nd January, 1968 copy Exhibit M-39 and his services were finally admittedly terminated *vide* letter dated the 16th January, 1968 copy Exhibit M-41.

The workman explained while appearing as his own witness as WW-1, that he sent an application for grant of further leave from 1st January, 1968 on medical grounds and that the management did not inform him either of the acceptance or the rejection of this application and arbitrarily struck his name off their rolls without informing him about it and that he thereafter sent the letter dated the 19th January, 1968 copy Exhibit W-A to them. The management denied having received any application for grant of leave from 1st January, 1968 on medical grounds or of the representation dated the 19th January, 1968. Although the workman deposed that he sent an application for grant of leave after 31st December, 1967 either under postal certificate or delivered it personally to some officer of the management, yet he could not substantiate this fact so much so he did not bring on record the copy of such an application. He could not adduce substantiate cogent evidence in respect of his having sent letter copy Exhibit W-A, dated the 19th January, 1968, and his oral bare statement can not be relied upon under the circumstance of the case particularly when it is found rebutted by the testimony of Shri Hari Singh.

In view of the letter Exhibit M-34 to M-41 referred to above, admittedly exchanged between the parties, and in absence of any evidence on record for the workman in respect of his having sent an application for extension of his leave from 1st January, 1968 I am convinced that he failed to comply with the order of his transfer dated the 12th December, 1967 copy M-33 and directions contained in the letter dated 2nd January, 1968 copy Ex. M-39 finally asking him to join duties at Derababa Nanak by 8th January, 1968 at the latest and telling him that in case of his failure to do so his services shall be terminated. He thus sat tight over these orders without sufficient cause and the management was left with no alternative or option then to strike off his name off their rolls or terminate his services on the grounds of his continued long absence from duty. Shri Raghubir Singh authorised representative for the workman contended that the management should have held an enquiry in the matter of the allegations of unwarranted absence of the workman from duty and that without adopting this course they had no right to dispense with his service in that manner. This argument has, however, no force, as the service of the workman were terminated not on the ground of commission of any misconduct but as a result of his long continued absence from duty from 1st January, 1968 till 16th January, 1968 without permission or sufficient cause. No authority could be submitted by Shri Raghubir Singh before me in support of his argument and I as such reject this contention as untenable while holding that no enquiry was necessary to be held against the workman in the matter of his absence from duty resulting in the termination of his services.

Assuming that such an enquiry was necessary and the continued long absence of the workman consisting a misconduct. It is settled law that the management can support the action taken by them against the management by production of evidence before the Industrial Tribunal or the Labour Court in case of thier failure to held an enquiry. I find that the management well succeeded in establishing their case relating to long continued absence of the workman from duty from 1st January, 1968 to 16th January, 1968 without sufficient cause, by over-whelming cogent documentary evidence referred to above and the termination of his services by them under the circumstances was fully justified and in order and he is not entitled to any relief. I accordingly answer the reference while returning the award in these terms.

Dated the 17th March, 1977.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 508/, dated the 21st March, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2724-4Lab-77/8896.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Hindustan Vacuum Glass Ltd., Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 72 of 1970

between

SHRI RAVI SHANKAR GUPTA, WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN
VACUUM GLASS LTD., FARIDABAD

AWARD

[F]

By order No. ID/FD/11663-67, dated 17th April, 1969 of the Governor of Haryana, the following dispute between the management of M/s Hindustan Vacuum Glass Ltd., Faridabad and its workmen Shri Ravi Shankar Gupta was referred to this Court then presided over by Shri P. M. Thukral, for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.—

“whether the termination of services of Shri Ravi Shankar Gupta was justified and in order, if not, to what relief is he entitled ?

The appointment of Shri P. N. Thukral as Presiding Officer, Labour Court, being held to be illegal by the Hon'ble Punjab and Haryana High Court, the Governor of Haryana referred the aforesaid dispute for adjudication by another Labour Court presided over by Shri O. P. Sharma,—*vide* his order No. 6091-Lab-70/22387, dated 31st July, 1970.

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The admitted facts of the case are that the workman employed as a Tube joiner in Addna No. 9 of the A shift of the management on wages of Rs 135 P. M. was served with a charge sheet reproduced as under, by the management concerned:—

HINDUSTAN VACUUM GLASS LIMITED, FARIDABAD

Parts/W-289/7425

July 13, 1968

Shri Ravi Shanker,
Tube Joiner,
Refill Spinning Section.

(Through :—Dy. M. (T)/S.G.T.

It has been reported that :—

At about 8-15 A.M. on July 10, 1968, you went to Shri S.C. Sharma, Senior Glass Technologist and started questioning as to why Shri Munshi Lal, Eindrucker had been transferred from Adda No. 9 to Adda No. 2. You threatened him by saying that you will ask the other workers to “slow down” in case Shri Munshi Lal was transferred.

At the start of the ‘A’ Shift on July 11 1968 (in which you were to be on duty), you told Shri Sher Ali, Blower, that basic production should not be achieved today.

Right from the start of the 'A' shift on July 11, 1968, you indiscriminately and without any justification started rejecting and throwing away the Refills which the Eindrucker passed on to you for joining the tubes. Thus, 30 good Refills went to waste. The Mistry and the Technical Assistant pointed out to you that it was highly improper on your part to do so because it was not up to you to determine and decide about the suitability, or otherwise, of the Refills 'formed' by the Eindrucker. You talked rudely to the Mistry and told him that you will act as you please. It was not without arguments that you started working properly.

The above are acts of misconduct under standing Orders Nos. 26(i), (iii), (xxii) and (xxxvi).

At about 6.00 A.M. on July 12, 1968, when you were on duty in 'A' Shift, you wrongly told your fellow-workers of Adda No. 9 that the target production having been achieved they should not produce any more Refills. When the Handworker, Shri Chandra Pal, told the workers that the production target had not been achieved, and that they should keep working, you persisted in telling them to the contrary. At this stage, the Technical Assistant, Shri S. K. Goswami, and the Shift Mistry, Shri Babu Ram, intervened, told you to resume work and persuaded the other workers to continue working. Thereupon, you spoke rudely and told Shri Sher Ali, Blower (one of the workers who agreed to continue working) "You may act as a well-wisher but I will not do so", walked out of the plant with Shri Rashid Ahmed, Gatherer, and Shri Angnoo, Melter, and stayed back from work till about 6-15 A.M.

At about 8.00 A.M., as the Shift was changing, you shouted at Shri Babu Ram, Shift Mistry and Shri Sher Ali, Blower, on the pretext that they had reported against you on the previous day. The Dy. Manager (T) who happened to come there, at that time, on his morning round, told you of the impropriety of your behaviour but you did not only not relent but threatened Sarvshri Babu Ram and Sher Ali that you would "see them" out-side the factory.) It was after a good deal of persuasion that you quietened down and walked away.

The above are acts of misconduct under Standing Orders No. 26(vii), (xvi), (xxii) and (xxxvi). You are hereby required to show cause by 10.00 A.M. on Monday, July 15, 1968, why disciplinary action should not be taken against you under the Standing Orders.

MCG : GKS : 12-7.

(Sd). . . . ,

General Manager.

The workman concerned submitted his written reply exhibited as W-2 in the enquiry proceedings, denying the charges levelled against him and pleaded that the management tried to create dissension amongst the members of the union and thus to break up the team work being carried on in different addas resulting in the loss of production and that they with that end in view transferred one Shri Munshi Ram from his Adda. He stated that on 10th July, 1968 at about 8.15 A.M. he had gone to talk about this matter, to Shri S. C. Sharma who misunderstood him and made a false complaint against him.

The management not finding the explanation of the workman as satisfactory, ordered an enquiry against him into the charge sheet reproduced above. Shri R. N. Sexena appointed as an Enquiry Officer by the management submitted his report dated 10th September, 1968 before the management concerned while holding all the charges excepting that of the workman telling Sher Ali Blower and other fellow workers on 12th July, 1968 wrongly that basic production had been achieved, and that they should not produce any more refill, well established. The management accepting the report of the Enquiry Officer, dismissed the workman from service,—vide their order, dated 24th October, 1968. The workman raised demand of his reinstatement with continuity of service and full back wages on the management concerned on the ground that his dismissal from service was illegal. The management did not accede to the prayer made by him and their refusal to reinstate the workman led to this reference.

The workman concerned alleged,—vide claim statement, dated 11th May, 1969 that there were two rival Unions of the workmen of the Factory of the management concerned and that the management concerned in order to create further dissensions amongst their workmen and disturb the work of Adda No. 9 of shift A ordered transfer of Shri Munshi Lal Eindrucker on 11th July, 1968 to Adda No. 2 and that the other workman of Adda No. 9 coming to know about this transfer, made a representation to Senior Glass Technologist Shri S. C. Sharma not to effect the transfer and told him that if given effect, this transfer would result in the fall of production and they would be deprived of production bonus. (He stated that Shri S. C. Sharma misunderstood him and the representation was wrongly considered by him as a threat of slow down in production. He assailed the order of his dismissal and the findings of the Enquiry Officer on the following other grounds :—

- (a) That copies of the proceedings of the enquiry and findings of the Enquiry Officer were not supplied to him and no opportunity was given to him by the management to clarify his position vis-a-vis the findings of the Enquiry Officer ;
- (b) That his services were terminated in order to victimise him for his refusal to sign an draft agreement of both the Unions in respect of a joint reference relating to the entitlement of bonus, on being so asked by Shri Ram Sarup Conciliation Officer ;

- (c) That his dismissal from service violated the provisions of section 33(2) of the Industrial Disputes Act, 1947 ;
- (d) That the enquiry held against him stood vitiated as a result of refusal to the Enquiry Officer to summon Shri M. C. Garg, Factory Manager as his defence witness;
- (e) That the 30 good Refills, alleged to have been rejected by him on 11th July, 1968 were not preserved and produced in the enquiry and were not even checked by the sorter and the charge levelled against him in this respect could not be proved by oral evidence; and
- (f) That there was no evidence relating to the allegation of his rude behaviour with Shri Sher Ali Blower and Babu Ram, Shift Mistry Co-workmen and his going out of the plant and staying back from work till about 6-15 A. M. on 12th July, 1968.

The management raised preliminary objections—*vide* written statement filed by them that the order of reference of the dispute was illegal in view of the Haryana Government having filed a Latter Patent Appeal against the order of the single Judge holding the appointment of Shri P. N. Thukral as Presiding Officer, Labour Court illegal and that the reference could not be considered as an order of the transfer of the first reference from the Court of Shri P. N. Thukral to that of Shri O. P. Sharma and that the reference was bad in law even for want of a demand directly on the management by the workman before his raising the dispute before the Conciliation Officer. On facts they while admitting that Shri Ravi Shankar Gupta was a Tube Joiner in Adda No. 9 in A Shift with effect from 9th February, 1966 denied other allegations,—*vide* written statement filed by them. They specifically denied the allegations that the order of transfer of Shri Munshi Lal Eindruker from Adda No. 9 to Adda No. 2 were made in order to bring down the production of former Adda and to cause loss to its workmen in collusion with the members of the rival Union. They stated that such orders were made in order to transfer, Shri Babu Ram who was found unable to co-relate his work with the employees of Adda No. 2, in the interest of production and that the workman had not only requested Shri Sharma not to give effect to the orders of transfer but he Actually threatened him with serious consequences if such transfer was effected. They asserted that full opportunity was given to the workmen to take part in the enquiry and to inspect and take copies of the record thereof by the Enquiry Officer and that the Enquiry held against him was fair and strictly in accordance with the principles of natural justice and the report of the Enquiry Officer was correct and made on the basis of reliable evidence adduced before him by the management. They finally gave out that a number of witnesses had deposed before the Enquiry Officer about the rejection of good Refills by the workman, without any objection by the latter that the Refill should have been preserved and the Enquiry Officer accepted this evidence and the findings could not be set aside on the ground that the Refill had not been preserved.

The workman controverted the pleas of the management and reiterated the allegations made by him in the claim statement,—*vide* rejoinder filed by him, with the result that the following preliminary issues were framed on pleas of the parties.—*vide* order, dated 7th December, 1970 :—

- (1) Whether the present order of reference dated 31st July, 1970 is illegal and inoperative for the reasons mentioned in para No. 1 of the preliminary objections ?
- (2) Whether the present reference can not be treated as an order of transfer but is a fresh order of reference which is not legal for the reasons given in para No. 2 of the preliminary objections ?
- (3) Whether the order of reference dated 31st July, 1970 is illegal because none of the parties applied for reference ?
- (4) Whether the workman did not raise any demand on the employer before raising the dispute before the Conciliation Officer and therefore, there is no Industrial Dispute ?

Issue No. 1.—Was decided against the management *vide* detailed order dated 3rd December, 1971 of the then Presiding Officer, Labour Court. The question of deciding issue Nos. 2 and 3 thus did not arise in view of the decision of issue No. 1 against the management. The management did not press their pleas covered by issue No. 4 inas much as they led no evidence in support thereof and shall be deemed under the circumstances to have withdrawn the objections relating to this issue. Even otherwise it has already been held and found by me on the legal aspect of the question relating to issue No. 4, involved in reference titled Shri S. C. Sethi *versus* Kirloskar Oil Engines pending in the Industrial Tribunal Haryana decided by me *vide* order dated 10th October, 1975, that it is no longer necessary for the workman to raise a demand on the management before his taking the matter to the Conciliation Officer, in order to constitute an Industrial Dispute. This issue is therefore decided against the management for all the reasons stated by me above.

The parties led evidence and rebuttal in respect of the vires of the enquiry held by Shri R.N. Sexena, after the decision of issue No. 1 by the Presiding Officer Labour Court in the manner as stated above *vide* his order dated 30th March, 1972. The management brought on record proceedings of the enquiry Ex. MW-1/1 and report of the Enquiry Officer Ex. MW-1/2 and examined Shri R.N. Sexena Enquiry Officer as MW-1 and led no other evidence. Shri R. N. Sexena proved the records of the enquiry Ex. MW-1/1 and his report Ex. M-1/2 to be signed by him and gave out that the workman concerned and his authorised representative had signed the

proceedings of the enquiry in his presence. The workman concerned appeared as his own witness and examined Shri R.N. Rai his authorised representative in rebuttal. I have carefully read the evidence led by the parties and the enquiry report Ex. MW-1/2 as also the proceedings of the enquiry Ex. MW-1/1.

I consider it necessary to state in extenso the provisions of section 11-A of the Industrial Disputes Act, 1947 and the observations of their Lordships of the Hon'ble the Supreme Court found made in an authority reported as 1973 I LLJ 278 between the workman of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd., and the management and others on the subject of the scope of authority and jurisdiction of the Labour Court and Industrial Tribunals under the aforesaid section in references made under section 10 of the Industrial Disputes Act, 1947 in the matter of appraisal of the evidence led by the parties before the Enquiry Officer and the determination of the correctness of his findings and the adequacy of the punishment awarded by the management.

11-A of the Industrial Disputes Act, 1947

"Where an Industrial Dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment of the case may require.

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

1973 I LLJ 278

Held, The question as to whether industrial disputes referred for adjudication prior to coming into force of S. 11A of the Industrial Disputes Act and pending adjudication are to be disposed of by applying the provisions of the said section is to be decided by having regard to the scheme of the statute and the language used therein. The principle is well settled that a retrospective operation is not to be given to a statute so as to impair an existing right. This is the general rule. But the Legislature is competent to frame a statute so as to have retrospective operation either by clearly expressing such intention or by necessary and distinct intendment.

The expression "has been referred" could not be isolated from the context. The said expression may have different connotations when they are used in different contexts.

A proceeding under section 11-A can only be on or after 15th December, 1971. This also indicates an implication that Section 11-A applies only to disputes which are referred for adjudication after this section has come into force. The question as to whether such expression relates to past or future events is to be gathered from the context in which it appears, and the scheme of the particular legislation. It is correct that procedural law has always been held to operate even retrospectively as no party has vested right in procedure.

Section 11-A has the effect of altering the law laid down by this Court in this respect by abiding the rights of the employer in as much as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the section applicable even to disputes, which had been referred prior to the coming into force of the section, there should be such a clear, express and manifest indication the section. There is no such express indication. An inference that the section applied to proceedings, which are already pending, can also be gathered by necessary intendment. In the case in hand, no such inference can be drawn as the indications are to the contrary.

The circumstances stated supra as well as the scheme of the section and particularly the working of the proviso indicate that Section 11-A does not apply to dispute which had been referred prior to 15th December, 1971. The section applies only to disputes which are referred for adjudication on or after 15th December, 1971. The prior disputes are to be dealt with in accordance with the decisions of this Court on this subject. The legal position as on 15th December, 1971, the date of enforcement of section 11-A of the I.D. Act could be summarised as follows:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer and the finding of misconduct is the plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair Labour practice or malafide.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

It would thus appear that the powers of this Court in this reference admittedly made before 15th December, 1971 the date of enforcement of section 11-A of the Industrial Disputes Act, in the matter of appraisal of evidence of the parties adduced by them before the Enquiry Officer and the determination of the correctness of the findings of the latter and the punishment awarded by the management are limited. In other words the findings of the Enquiry Officer if found to be plausible on the evidence on record and are not perverse, have to be upheld and cannot be interfered with and the punishment awarded by the management, if permissible under the Certified Standing Orders cannot be reduced merely because the Presiding Officer of the Labour Court or the Industrial Tribunal would have come to different findings on the same record of evidence or considers the punishment awarded by the management to be excessive.

Having stated the law on the subject, it has now to be seen and found out, if the findings of the Enquiry Officer are plausible and are born out from the record of the enquiry.

The first charge is found well supported by the evidence of Shri S.C. Sharma examined before the Enquiry Officer by the management and in absence of any cogent evidence by the workman in support of the plea that a representation made by him to Shri Sharma was mistakenly taken by him as a threat, the findings of the Enquiry Officer cannot be said to be perverse and as such being plausible cannot be interfered with. The second charge stands established by the evidence of Shri Sher Ali, Shri Babu Ram Mistry eye witnesses of the occurrence and Shri S.K. Goswamy and Shri S.C. Sharma who had been told by Shri Babu Ram about the incident immediately thereafter. The findings of the Enquiry Officer being thus plausible cannot be interfered with in view of the proposition of law stated above. Third charge finds support from the evidence of Shri S.K. Goswamy, Shri Babu Ram Mistry a Co-workman and Sher Ali another Co-workman on Adda No. 9, all eye-witnesses of the occurrence. The findings of the Enquiry Officer on a question of fact covered by this charge are directly borne out from reliable evidence and cannot be set aside merely on the suggestion of the workman that the management wanted him to leave the mercantile association. The contention of Shri A. N. Rai that it was necessary for the management to preserve the 30 rejected Refills in order to prove that, these Refills were good and had been rejected by the workman without reason, has no force in view of the direct evidence of the witnesses that they saw these rejected Refills and found these to be good and usable in all respects.

The fourth charge having been held by the Enquiry Officer, to be unestablished need not be gone into by this Court. The fifth charge is found directly supported by the testimony of Shri S. N. Sokhi Dy. Manager, Shri Babu Ram, Shri Sher Ali and Shri S.C. Sharma all eye-witnesses of the occurrence and the bare statement of the workman made by him in denial of this charge cannot be held to be sufficient to rebut the aforesaid overwhelming evidence. The findings of the Enquiry Officer returned on the basis of direct evidence of as many as four witnesses cannot at any rate be said to be perverse liable to be set aside under section 11-A of the Industrial Disputes Act, 1947 particularly when Shri S.C. Sharma and Shri Sokhi were officer of the management and had no motive to falsely implicate the workman.

The plea that the reference violated the provisions of section 33(2) of the Industrial Disputes Act, 1947 being not pressed by Shri R. N. Rai authorised representative of the workman is hereby rejected as untenable. The workman is found to have taken part fully in the proceedings of the enquiry, from a perusal of the record Ex. WW-1/1. He is found to have actually signed the proceedings of the enquiry taken against him on every date of hearing. The workman Shri Ravi Shankar and his authorised representative Shri Jug Raj Singh are found to have made a statement on 12th September, 1968, that they did not propose to examine any witness in defence and as such closed their case. The plea of the workman that the Enquiry Officer refused to summon Shri M.C. Garg as a defence witness is not found substantiated. It is on the other hand born out from the record of the enquiry that the Enquiry Officer told the workman to arrange to produce his own defence and that necessary facility would be given to him. It cannot therefore be said that the evidence of the workman was in any way shut down.

Considered from any angle, the enquiry held against the workman by Shri Saxena is proved to be fair in all respects and strictly in accordance with the principles of natural justice with opportunity to the latter to take part therein. The findings of the Enquiry Officer made are again fully born out from the records of enquiry and are plausible and correct in all respects. Nothing could be brought to my notice during arguments rendering these findings to be perverse liable to be rejected. The question of the adequacy of the punishment awarded by the management cannot legally be gone into by me in this reference made admittedly before 15th December, 1971 the date of enforcement of section 11-A of the Industrial Disputes Act permitting reduction of such punishment.

No other point having been urged before me, I hold in view of the findings of fact and law made by me, that the termination of services of the workman by the management was justified and he is not entitled to any relief. I, accordingly answer the reference while returning the award in these terms.

Dated the 23rd March, 1977.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 575, dated the 31st March, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.